

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 18 of 2000

in

SPECIAL CIVIL APPLICATION No 2451 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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BECHARBHAI S PRAJAPATI

Versus

STATE OF GUJARAT  
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Appearance:

MR MC BHATT for Appellant

MR SK PATEL AGP for Respondents Nos. 1 and 5.

MR YN RAVANI for Respondents Nos. 2-A to 2-D & 3.

MR MP PRAJAPATI for Respondent No. 4  
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CORAM : MR.JUSTICE J.M.PANCHAL

and

Date of decision: 29/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr. S.K. Patel, learned A.G.P. waives service of notice on behalf of respondents Nos.1 and 5. Mr. Y.N. Ravani, learned advocate waives service of notice on behalf of respondents Nos.2-A to 2-D and 3. Mr. M.P. Prajapati, learned advocate waives service of notice on behalf of respondent No.4. At the joint request of the learned advocates for the parties, the appeal is taken up for final hearing today.

2. By means of filing this appeal under clause 15 of the Letters Patent, the appellant has challenged legality of judgment dated December 30, 1999 rendered by the learned Single Judge in Special Civil Application No. 2451 of 1989 by which the prayer made by the appellant to set aside order dated January 24, 1983 passed by the Mamlatdar and A.L.T. Gandhinagar declaring that the transfer of the land in question is in breach of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Tenancy Act" for short) as confirmed by the Prant Officer, Gandhinagar and the Gujarat Revenue Tribunal, is rejected.

3. The appellant and his wife purchased the land in dispute by a registered sale deed dated June 8, 1982 from Mr. A.S. Patel and Mr. K.S. Patel for consideration of Rs.30,000/- On execution of the sale deed, possession of the disputed land was handed over to the appellant. On the basis of the sale deed, entry No. 1348 was mutated in revenue record and the appellant as well as his wife were shown as occupants of the land.

4. It may be stated that the appellant had purchased a piece of agricultural land situated at village Adalaj, Taluka and District Gandhinagar by registered sale deed dated June 8, 1981 for a consideration of Rs.31,852/- and entry No. 6586 regarding that sale was certified on June 18, 1981. The General Inspection Team of the record of rights submitted a report on November 30, 1982 stating that the appellant is residing at a distance of 15 KMs. from the land purchased by sale deed dated June 8, 1982 and, therefore, was not an agriculturist as defined in Section 2 (2) and 2 (6) of the Tenancy Act. By the said report, a proposal was made to initiate the proceedings under Section 84C of the Tenancy Act. Accordingly, the Mamlatdar & A.L.T. Gandhinagar issued notices to the

appellant as well as the respondent No.2 calling upon them to show cause as to why the sale should not be declared to be invalid and land should not be forfeited to the Government.

5. The parties had led evidence in the matter and after considering the evidence the Mamlatdar and A.L.T. Gandhinagar by his order dated January 24, 1983 declared that the sale was invalid and passed consequential order of vesting the land in Government free from all encumbrances.

6. It may be stated that Section 84C (2) of the Tenancy Act, inter alia, provides that after the Mamlatdar comes to a conclusion that the transfer of land is invalid, he has to make an order declaring the transfer to be invalid unless the parties to such transfer give an undertaking in writing that within a period of three months from such date as the Mamlatdar may fix, they shall restore the land along with the rights and interest therein, to the position in which it was immediately before the transfer and the land is so restored within that period. Accordingly, the Mamlatdar by his order dated January 24, 1983 directed that if the parties, after the receipt of the order, within 90 days restore the land to its original position, the order forfeiting the land to the Government shall not be implemented.

7. This order of the Mamlatdar and A.L.T Gandhinagar was challenged by the appellant before the Prant Officer, Gandhinagar by way of filing appeal under Section 74 of the Tenancy Act. The said appeal was registered as Tenancy Appeal No. 235 of 1984. The Prant Officer, Gandhinagar, after hearing the parties, dismissed the appeal by an order dated May 26, 1986.

8. Feeling aggrieved by the appellate order, the appellant preferred Revision Application No. TEN. B.A. 54/88 before the Gujarat Revenue Tribunal. The Tribunal by its judgment dated February 17, 1989 rejected the revision application. Therefore, the appellant filed Special Civil Application No. 2451 of 1989 and challenged the order passed by the Mamlatdar & A.L.T. as confirmed by the appellate authority and revisional authority. The learned Single Judge has dismissed the petition by judgment dated December 30, 1999 which has given rise to the present appeal.

9. The learned counsel for the appellant submitted that the scheme of Section 84C of the Tenancy Act is such

that if the parties to transfer give an undertaking in writing that within a period of three months from such date as may be fixed by the Mamlatdar they shall restore the land along with the rights and interest therein to the position in which it was immediately before the transfer and the land is so restored within that period, the order declaring that the transfer is invalid should not be implemented and forfeiture is not to be ordered. The learned counsel pointed out that the Mamlatdar by his order dated January 24, 1983 has directed the parties to restore the land in its original position and on such restoration the order passed by him was not to be implemented and as this order has remained in operation all throughout the parties should be afforded an opportunity to restore the land to its original position.

10. On notices being issued, Mr. Y.N. Ravani, learned counsel has appeared for the original Vendors i.e., respondents Nos.2-A to 2-D and 3 and stated that they are ready to restore the land in question in its original position. The appellant has filed an additional affidavit dated November 20, 2000 stating that the appellant and respondents Nos.2-A to 2-D as well as respondents Nos.3 and 4 are ready to restore the land to its original position in which it was immediately before the disputed transfer which had taken place on June 8, 1982. The respondent No.4 who is the wife of the appellant has also filed similar affidavit. Mr. Kantibhai Shanabhai Patel, who is the respondent No.3 has also filed affidavit stating that the original Vendors are ready to restore the land to its original position before the transfer.

11. Heard the learned counsel for the parties.

12. It is not in dispute that the Mamlatdar by his order dated January 24, 1983 permitted the parties to restore the land to its original position in which it was immediately before the transfer. This direction given by the Mamlatdar was never set aside either by the appellate authority or revisional authority and was in operation because of the stay granted by different authorities from time to time. As the parties have given an undertaking in writing that within a period of three months they shall restore the land along with the rights and interest therein to the position in which it was immediately before the transfer, we are of the opinion that the order directing forfeiture of the land to the State Government cannot be sustained in view of the salutary provisions of Section 84C (2) of the Act. The appeal, therefore, deserves to be partly accepted.

13. For the forgoing reasons, the appeal partly succeeds. The order declaring the transfer to be invalid is upheld. However, the direction given by the Mamlatdar and A.L.T. Gandhinagar that the land in question shall vest in the State Government free from all encumbrances shall not be implemented and operated if within a period of three months from today the parties to the petition restore the land along with the rights and interest therein to the position in which it was immediately before the transfer. The order of costs imposed by the learned Single Judge is hereby set aside. The appeal stands allowed partly with no orders as to costs.

29.11.2000. (J.M. Panchal, J.) (A.M.Kapadia, J.)